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1 JOHN R. ROBERTS
2 Bankruptcy Trustee
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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 IN RE: CASE NO. **13-30496-D-7**

10 **EDWARD MASAO KURATA** DC NO. JRR-1
11 **LORRAINE ALAI KURATA**

12 Debtor(s). DATE: **NOVEMBER 13, 2013**
13 TIME: **10:00 A.M.**
14 COURTROOM: **34**

15 **TRUSTEE'S MOTION FOR SALE OF REAL PROPERTY**
16 **11 U.S.C. § 363(b)**

17 The Motion of JOHN R. ROBERTS, as Trustee of the estate of the above-named
18 debtor, respectfully represents:

19 1. That movant is the duly elected, qualified and acting Trustee of the estate
20 of the above-named debtors

21 2. That movant has, as such Trustee, possession of the following asset
22 belonging to the debtors' estate:

23 **Single Family Residence commonly known as**
24 **1953 Eagle Glen Dr. Roseville, CA 95661**
APN: 456-060-008-000

25 3. That it is in the best interest of the estate that said asset be sold in that it
26 will generate cash for the estate and said sale is for the fair market value.

27 4. The Trustee has received an offer from MAOWEN HU and XINCHUN LIN,
28 no relationship to the debtor, for the sum of \$740,000.00 cash as evidenced by the

1 Residential Purchase Agreement and Joint Escrow Instructions attached to the Exhibits
2 and marked as **Exhibit "A"**.

3 5. Any costs to be paid will be paid as agreed upon in the attached offer.

4 6. An escrow has been opened at OLD REPUBLIC TITLE COMPANY,
5 escrow number 2123014980-RB and a \$7,400.00 deposit has been placed with said
6 title company.

7 7. Liens recorded against the property will be paid. Trustee has reviewed
8 the Preliminary Title Report and has accounted for all recorded liens. A copy of the
9 Preliminary Title Report is attached to the Exhibits as **Exhibit "B"**.

10 8. The property is not secured by any Deeds of Trust.

11 9. The property is secured by a lien recorded by Franchise Tax Board on
12 December 9, 2009. The secured lien totals \$302,041.00.

13 10. Franchise Tax Board has entered into a Stipulation with the Trustee for
14 carve out of the penalty portion of the statutory lien pursuant to 11 U.S.C. § 724(a) and
15 11 U.S.C. § 551. Said Stipulation was filed with the Court on October 1, 2013 and
16 provides a \$15,000.00 carve out to the bankruptcy estate. See Stipulation attached to
17 the Exhibits and marked as **Exhibit "C"**. Franchise Tax Board will be paid the sum of
18 \$287,041.00 from the proceeds of sale.

19 11. The property is secured by a lien recorded by Internal Revenue Service on
20 August 16, 2012. The secured lien totals \$918,737.81.

21 12. Internal Revenue Service has entered into a Stipulation with the Trustee
22 for carve out of the penalty portion of the statutory lien pursuant to 11 U.S.C. § 724(a)
23 and 11 U.S.C. § 551. Said Stipulation was filed with the Court on September 30, 2013
24 and provides a \$17,500.00 carve out to the bankruptcy estate. See Stipulation attached
25 to the Exhibits and marked as **Exhibit "D"**. Internal Revenue Service will be paid the
26 sum of \$355,994.64.00 from the proceeds of sale.

1 13. Real property taxes, homeowner association dues and utility liens will be
2 paid from the escrow, as applicable, along with the usual and customary escrow and
3 title fees.

4 14. ANN BRYANT OF LYON REAL ESTATE has been employed by this
5 Court to list and market the property pursuant to the Court's Order, a copy of which is
6 attached to the Exhibits as **Exhibit "E"**. The listing agreement called for real estate
7 commission to be paid in the sum of six percent (6%) of the sales price.

8 15. Trustee seeks authorization to pay real estate commissions in the amount
9 of six percent (6%) of the purchase price. Through escrow on the sale of the Property,
10 and subject to Bankruptcy Court approval, the Trustee shall pay commissions as
11 follows: \$25,900.00 to ANN BRYANT of LYON REAL ESTATE, Auburn and \$18,500.00
12 to RANDY SCHUE of LYON REAL ESTATE, Roseville.

13 16. The bankruptcy estate will net approximately \$32,500.00 from the sale. A
14 copy of the estimated closing statement is attached to the exhibits as **Exhibit "F"**.

15 17. The Property is being sold on an "AS IS" basis without warranties of any
16 kind, expressed or implied, being given by the Seller, concerning the condition of the
17 Property or the quality of the title thereto, or any other matters relating to the Property.

18 18. The fourteen (14) day stay period of the order approving the sale of the
19 Property under Federal Rules of Bankruptcy Procedure 6004(h) is requested to be
20 waived.

21 **WHEREFORE**, based upon the foregoing, the Trustee respectfully submits that
22 good cause exists for granting the Sale Motion and requests that the Court enter an
23 order as follows:

24 1. Authorizing the Trustee to sell the Property to the Buyer (or Successful
25 Bidder) pursuant to the terms and conditions as set forth in the Residential Purchase
26 Agreement and Joint Escrow Instructions attached to the Exhibits and marked as
27 **Exhibit "A"**.

1 2. Authorizing the Trustee to sign any and all documents convenient and
2 necessary in pursuit of the sale as set forth above, including but not limited to any and
3 all conveyances contemplated by the sale.

4 3. Approving the payment of the real estate commissions in the total amount
5 not to exceed 6% of the purchase price and all other costs associated with the sale.

6 4 Waiving the fourteen day stay of the order approving the sale of the
7 Property under Federal Rules of Bankruptcy Procedure 6004(h).

8 5. For such other and further relief as the Court deems just and proper under
9 the circumstances of this case.

10
11 DATED: October 15, 2013

12 /s/ JOHN R. ROBERTS, TRUSTEE
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17 State Bar No. 77919
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